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10/759,713	01/16/2004	Marcia Grossman Nozik	6881-0001-1	3259

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EXAMINER

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3739

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/759,713
Filing Date: January 16, 2004
Appellant(s): NOZIK ET AL.

MAILED
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GROUP 3700

Wayne R. Grohs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/13/2006 appealing from the Office action mailed 10/13/2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Edwards et al. (USPN 6,440,159 B1).

Regarding claim 1, Edwards et al. disclose a sling holder (10) for holding an object for an extended period of time against the skin, said sling holder comprising: a strap (comprising 20, 22, 24 and 32) having a first end (20) and an opposing second end (22); a fastener (64) for coupling said first end to said second end; and at least one pocket

attachable (see element 16 in figures 1, 3 and 4) to said strap, see col. 4-10 and figures 1-16.

Regarding claim 2, Edwards et al. further disclose a contoured section of varying width over a portion of a length of said strap, see figures 1-16.

Regarding claim 3, Edwards et al. further disclose the fastener is selectively fastenable to allow a length of said sling holder to be adjusted, see col. 4-10 and figures 1-16.

Regarding claim 4, Edwards et al. further disclose the fastener (64) is hook (65) and loop (66) fastening material, see col. 8, lines 28-44.

Regarding claim 5, Edwards et al. further disclose the strap is fabricated from a material selected from the group of materials consisting of elastic material, non-elastic material, and combinations of the foregoing materials, see col. 5, lines 32-49.

Regarding claim 6, Edwards et al. further disclose padding (65) disposed on said strap.

Regarding claim 7, Edwards et al. further disclose the pocket is removably attachable to said strap, see element 16 in figures 1, 3 and 4 and see col. 4-10 and figures 1-16.

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Regarding claim 8, Edwards et al. further disclose the pocket has an inwardly facing surface to be held against the skin of a user upon assembly of said sling holder on a body part, see col. 4-10 and figures 1-16.

Regarding claims 9 and 10, Edwards et al. further disclose that the inwardly facing surface is fabricated from a thermally conducting material, see col. 4, line 41 through col. 5, line 20. Additionally, the inwardly facing surface is fabricated from a thermally insulating material (the material comprising strips 68-70. Alternatively, all of the materials on the inwardly facing surface have finite non zero thermal conductance (as well as thermal or heat capacity) and therefore can be considered in the broad sense both thermally conducting and insulating.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silverberg (USPN 5,823,984) in view of Allen (USPN 5,507,794).

Regarding claim 1, Silverberg discloses a sling holder (10) for holding an object for an extended period of time against the skin, said sling holder comprising: a strap (12); having a first end and an opposing second end; a fastener (14) for coupling said first end to said second end; and at least one pocket attachable (20) to said strap, see col. 1-4 and figures 1-7, particularly figures 2, 5 and 6. Silverberg fails to disclose a single fastener positioned completely within the perimeter of said strap. It is extremely well known in the art to provide a thermal pad/strap/wrap with various alternate fastening means. It should be noted that Silverberg discloses that the hook-type fasteners (14) work in combination with the loop-type surface of adjoining straps (panels 12). Allen discloses a thermal strap/device (10) and teaches an alternate means of fastening by providing the device with a single hook-type fastener positioned completely within the perimeter of the strap (10) that fastenably couples to the loop-like material on the other end and side of the strap in order to secure the strap/device about the user. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Silverberg, as is well known in the art and taught by Allen, to use a single hook-type fastener positioned completely within the perimeter of the strap as an alternate fastening means in order to secure the strap to a user.

Regarding claim 2, Silverberg further discloses a contoured section of varying width over a portion of a length of said strap, see figure 6.

Regarding claim 3, Silverberg further discloses the fastener is selectively fastenable to allow a length of said sling holder to be adjusted, see col. 1-4 and figures 1-7.

Regarding claim 4, Silverberg further discloses the fastener (14) is hook-and-loop fastening material, see col. 3.

Regarding claim 5, Silverberg further discloses the strap is fabricated from a material selected from the group of materials consisting of elastic material, non-elastic material, and combinations of the foregoing materials, see col. 3, lines 5-18.

Regarding claim 6, Silverberg further discloses padding (34) disposed on at least one of said first strap, said second strap, and said third strap, see col. 3, lines 5-18 and figure 4.

Regarding claim 7, Silverberg further discloses the pocket (20) is removably attachable to the strap, see col. 3, lines 29-52 and figure 4.

Regarding claim 8, Silverberg further discloses the pocket has an inwardly facing surface to be held against the skin of a user upon assembly of said sling holder on a body part, see figure 4.

Regarding claims 9 and 10, Silverberg further discloses the claimed invention. The material on the inwardly facing surface of the pocket/pouch (20) have finite non zero

thermal conductance (as well as thermal or heat capacity) and therefore can be considered in the broad sense both thermally conducting and insulating.

Regarding claim 12, Silverberg further discloses a plurality of pockets to be attachable to said strap, see col. 4, lines 21-25 and figures 4 and 7.

Regarding claim 13, Silverberg further discloses a strap includes at least one extension (another of 12) member interposed between ends of said strap for varying the length of said strap, see figures 5 and 6.

Regarding claims 14 and 15, Silverberg further discloses at least one extension member comprises a temporary hook-loop type fastener (14) mounted on interfacially engaging portions of the strap, see col. 3, lines 18-29.

Regarding claim 16, Silverberg discloses a sling holder (10) for holding an object against the skin, said sling holder comprising: a first strap (first of 12); a second strap (second of 12) for adjusting a length of said sling holder, said second strap being attachable at a first end thereof to said first strap; a fastener (14) for coupling a second end of said second strap to said first strap; and at least one pocket (20) attachable to at least one of said first strap and said second strap, see col. 1-4 and figures 1-7, particularly figures 2, 5 and 6.

Regarding claim 17, Silverberg further discloses a third strap (third of 12) interposable between said first strap and said second strap for further adjusting said length of said sling holder, see col. 1-4 and figures 1-7, particularly figures 2, 5 and 6.

Regarding claims 18 and 19, Silverberg further discloses said third strap is removably coupled to each of said first strap and said second strap using a hook-and-loop material (14). Additionally, Silverberg discloses the fastener (14) for coupling said first strap to said second strap at opposing ends thereof is a hook-and-loop material, see col. 3.

Regarding claim 20, Silverberg further discloses at least one of said first strap, said second strap and said third strap comprises a contoured section of varying width over a portion of a length thereof that facilitates the positioning of said strap on a body portion, see figure 6.

Regarding claim 21, Silverberg further discloses padding (34) disposed on at least one of said first strap, said second strap, and said third strap, see col. 3, lines 5-18 and figure 4.

Regarding claim 22, Silverberg further discloses the pocket (20) is removably attachable to at least one of said first strap and said second strap using a hook-and-loop fastening material, see col. 3, lines 29-52 and figure 4.

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Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silverberg (USPN 5,823,984) in view of Allen (USPN 5,507,794) as applied to claim 1 above, and further in view of Noppel et al. (USPN 5,069,208).

Regarding claim 11, Silverberg in view of Allen disclose the claimed invention except for a temperature indicator on at least one of said strap and said pocket. Noppel et al. disclose a thermal bag/pack containing a heat exchange agent and teach the providing the bag/pack with “a film of a sensitive material capable of indicating whether the temperature of transformation has been reached”, see col. 4, lines 60-64. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Silverberg in view of Allen, as taught by Noppel et al., to provide at least one of the strap or pocket with “a film of a sensitive material capable of indicating whether the temperature of transformation has been reached.”

(10) Response to Argument

The examiner will address Applicants arguments/remarks in turn. Additionally the examiner's response will be organized into sections A, B and C in order to correspond to Applicant's organization.

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Section A:

Applicant summarizes the Edwards et al. patent on pages 3, last paragraph through page 4, first paragraph. Next Applicant asserts (see page 4, first full paragraph beginning on line 10) “Edwards fails to disclose, teach, or suggest a strap having a first end and an opposing second end, a single fastener for coupling said first end to said second end, and at least one pocket attachable to said strap.” Claim 1 uses the transitional phrase “comprising”, which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps, see MPEP 2111.0. If Applicant wishes to preclude the examiner from applying the Edwards et al. patent as a 102(e) reference, the examiner suggests Applicant use the transitional phrase “consisting” and/or add further limitations to accomplish this purpose. Although operational characteristics of an apparatus may be apparent from the specification, we will not read such characteristics into the claims when they cannot be fairly connected to the structure recited in the claims. See *In re Self*, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

Section B:

Applicant summarizes both the Silverberg patent and the Allen patent beginning on page 4, second from the last line and through page 5, second paragraph. Applicant highlights that Silverberg discloses a wrap that is “without the need for elastic bands,” while Allen disclose a wrap that is flexible and elastic. Next Applicant asserts “Silverberg and Allen, individually or in

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combination, fail to disclose, teach, or suggest a sling holder having a strap having a single fastener, the fastener being positioned completely within the perimeter of the strap, as recited in claim 1,” page 5, lines 11-13. The examiner can only disagree with respect to what Silverberg and Allen would have **collectively** taught one of ordinary skill in the art at the time of the invention. As stated in the rejection Silver berg discloses the claimed invention except the single fastener with the perimeter of the strap. Allen teaches the use of a single hook type fastener placed on one end and a mating loop type fastener on the opposing end of a wrap as a means of securing the wrap about its wearer. So one of ordinary skill in the art would have been motivated to place the three separate fasteners that extend over the perimeter of the strap as disclosed by Silverberg with a single fastener that is within the perimeter of the strap that is taught by Allen.

Next, in response to applicant's argument that Silverberg and Allen teach away from each other since “the Allen reference emphasizes the stretchable, elastic qualities of its device while Silverberg explicitly discloses a wrap that snugly fits around a body area without the need for elastic bands,” see the last two lines of page 5 and the first two lines of page 6, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

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Section C:

The arguments/remarks refuting the rejections of claims 16-22 can be addressed by the examiner's response in the above section B.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Aaron Roane

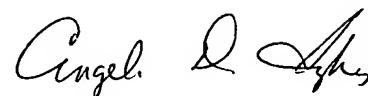


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